

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

L.W. Benjamin,)	C/A No.: 0:07-2696-JFA-JRM
)	
Plaintiff,)	
vs.)	ORDER
)	
State of South Carolina 16 th Circuit Court)	
of Common Pleas; Judge John C. Hayes, III;)	
and Judge Paul E. Short, Jr.,)	
)	
Defendants.)	
_____)	

The *pro se* plaintiff, L.W. Benjamin, initiated this action pursuant to 42 U.S.C. § 1983 contending that the defendants violated his civil rights. Specifically, the plaintiff contends that his Seventh Amendment right to a jury trial was denied in a South Carolina state court civil action filed in 2002. The plaintiff seeks \$375,000 in damages.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he suggests that this court should dismiss this action because all defendants are immune from suit. The Report sets forth in detail the relevant facts and

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

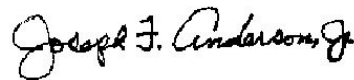
standards of law on this matter, and the court incorporates such without a recitation.

The plaintiff was advised of his right to file objections to the Report and Recommendation, which was entered on the docket on August 18, 2007. The plaintiff filed timely objections² to the Report. The court has reviewed the plaintiff's objections and finds them to be unpersuasive.

After a careful review of the record, the applicable law, the Report and Recommendation, and the objections thereto, the court finds the Magistrate Judge's recommendation to be proper. Accordingly, the Report and Recommendation is incorporated herein by reference and this action is dismissed without prejudice and without issuance and service of process.

The plaintiff's motion to proceed *in forma pauperis* is moot as the plaintiff has since paid the filing fee.

IT IS SO ORDERED.



Joseph F. Anderson, Jr.
United States District Judge

December 20, 2007
Columbia, South Carolina

² Under 28 U.S.C. § 636(b)(1), the district court is obligated to conduct a *de novo* review of every portion of the Magistrate Judge's Report to which objections have been filed. The court reviews the Report only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005). *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to timely file specific written objections to the Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985).